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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/110,678	07/07/1998	RANDELL L. MILLS	9113-20-C11	4978

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EXAMINER

KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/110,678

Applicant(s)

MILLS, RANDELL L.

Examiner

Stephen J. Kalafut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-131 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-131 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>18 May 2006</u> | 6) <input type="checkbox"/> Other: _____ |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 15 December 2006 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2-131, for reasons of record, are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. See paper no. 12, pages 2-4.

Claims 2-131, for reasons of record, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. See paper no. 12, pages 4-9.

Applicant's arguments filed 15 December 2006 have been fully considered but they are not persuasive.

Applicant faults consultary examiner Bernard Souw (page 2) for drafting, "numerous lengthy appendices totaling hundreds of pages". Applicant has submitted remarks and

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appendices totaling over a hundred pages each. Also, while applicant faults Dr. Souw for drafting these appendices, he also contradictorily alleges that the “Committee”, of which Dr. Souw is a member”, has “largely ignored” the “record evidence” that he has submitted (page 24).

Applicant argues (page 4), that the “Committee does not even mention, let alone consider, most of the certified experimental evidence” that he has submitted. Contrary to this assertion, the reasons that the evidence has not been persuasive were explained in the Office actions of paper nos. 20050109 and 20060407, and the Appendices attached thereto. Failure to be persuaded is not the same thing as a refusal to consider. Applicant alleges that the “Secret Committee” has dismissed his evidence (page 22), yet faults what he considers “erroneous arguments” in the Appendices of Dr. Souw (page 23), which themselves are a consideration of evidence submitted by applicant.

Applicant argues (pages 25-26) that “the level of support (or acceptance) in the scientific community is not the proper standard for ascertaining whether an applicant has satisfied the enablement or utility requirements under Sections 112 and 101”. Section 112 refers to persons “skilled in the art” to which the invention “pertains”, while Section 101 states that an inventor may obtain a patent “subject to the conditions and requirements of this title”, some of which are recited in Section 112. The “scientific community” would represent people “skilled in the art”, and thus the level of support therein would be a factor in determining whether the requirements of Sections 112 and 101 have been met.

Applicant asks (page 30) how can the “Committee” admit on one hand that Quantum Mechanics “needs improvement”, but on the other hand claims it as a “scientific principle”? Here, applicant omits an important part of Dr. Souw’s statement, that SQM “contains parts that

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need improvement” (emphasis added). This would imply that the rest of SQM is satisfactory as it is. Classical Newtonian physics, with its explanation of gravity and laws of motion, works well on the scale of everyday observation, but could not explain all natural phenomena, such as the fact that no object other than electromagnetic waves could move at the speed of light. These would be explained by Einstein’s theories of relativity. Einstein’s theories were an improvement upon Newton’s laws, but did overturn them with regard to the phenomena that they did explain. Thus, Newtonian mechanics are scientific principal within a certain scale of observation, but needed improvement to explain reality outside that scale.

Applicant makes or repeats various arguments about examiners Langel, Waymer and Jaganathan, Specialist McGuinty, Supervisor Silverman, Directors Rogan and Kepplinger, Court Cases, and activity by Dr. Park, none of which determine whether applicant has satisfied the requirements of Sections 112 and 101.

Applicant argues (page 120-122) that consultory examiner Bernard Souw owns and works for a business that is “in competition with Applicant”. Applicant’s invention as recited in the present claims is drawn to compounds, dopants and methods of making the compounds, while Dr. Souw’s work pertains to microwave plasmas, and is thus not in competition with the present subject matter. Applicant refers to other applications to which his alleged hydrinos are applicable. By applicant’s logic, house building and papermaking would be in competition because they both use wood as a raw material.

Once again applicant faults the “Committee” for relying on Krieg (pages 28-29), doing so because the “Committee” was “feeling the pressure to back up its claims”. Krieg was not cited because of any “pressure”, but to address a specific argument raised by applicant, that the

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“Committee” has failed to find any physical law the applicant has violated. Krieg makes four basic points. First, Krieg states that total energy, identified by the variable “E”, is the sum of kinetic and potential energy. Second, he uses the laws of electricity and magnetism to establish the potential energy of the proton-electron system. Third, he used the uncertainty principle to get an order of magnitude estimate for the momentum of an electron for a given orbit, which orbit is identified by its radius as “r”. Fourth, he used calculus find the minimum value of “r” by taking the derivative of “E” and setting it equal to zero. Nowhere in applicant’s arguments about Krieg are any of these points disputed.

Applicant argues (pages 133-134) that the “Committee” contradicts itself in the statement in the Office action of 09 September 2005, in serial no. 09/362,693, and in the Advisory action of 12 December 2005, in serial no. 09/110,694, “which do not necessarily require the use of hydrinos, while applicant's invention (in the present application) deal with methods of making compounds that include hydrinos”. Applicant takes this as an admission that the committee has “been forced to recognize the operability of BlackLight's novel hydrogen technology based on the required use of hydrinos to distinguish it from Dr. Souw's work”. This statement was, and is, in no way whatsoever intended to be taken as an admission that the present examiner, or anyone consulted thereby, considers applicant’s invention to be operable. The statement was only intended to show how Dr. Souw’s work is seen as distinct from, and thus not conflicting with applicant’s invention, without regard to its operability or patentability.

Applicant argues (page 141) that Dr. Souw has relied on a fraud made by Dr. Andreas Rathke, where Dr. Rathke changes mathematical signs in applicant’s equations (1) and (9). Since the articles which Dr. Rathke cites (nos. 24 and 25, on page 8 of his article) are not of

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record, whether Dr. Rathke has done what applicant alleges cannot be determined. However, it is noted that equation (1), on page 2 of the Rathke article appears identical to Equation (2) in applicant's attachment 58, except that applicant uses the coordinates "r", "theta" and "phi" within the parentheses, along with "t", whereas Rathke uses only "x" and "t". No signs, such as plus or minus, appear to have been changed.

The IDS of 15 December 2005 has been reviewed. All citations are already of record, and have been addressed in previous Office actions.

This is a Request for Continued Examination of applicant's earlier Application No. 09/100,678. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however,

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event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk

STEPHEN KALAFUT
PRIMARY EXAMINER
GROUP 1700

